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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,380	02/11/2002	Kingsley Gifford	100-1193	1248

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EXAMINER

CHIANG, JACK

ART UNIT	PAPER NUMBER
2642	10

DATE MAILED: 03/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/980380

Applicant(s)

K. Gifford

Examiner

J. Chiang

Group Art Unit

2642

#10

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE -3- MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 2-11-02.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-16 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-16 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____.

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

CLAIMS

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-2, 4-10, are rejected under 35 U.S.C. 102(b) as being anticipated by Bertolet (US 5694452).

Regarding claim 1, Bertolet shows:

Programming a telephone assembly (fig. 1) having means to receive and transmit a message to one or a plurality of phones (14-18, fig. 5);

Providing a programmed telephone assembly (fig. 1) to a user, the telephone assembly being housed in housing means (10) having theme identification means (see 14-18) for identifying a theme associated with the phone service.

Regarding claim 4, Bertolet shows:

A telephone assembly (fig. 1) having means to receive and transmit a message to another phone (fig. 5);

Programming means (14-18) for programming the telephone assembly (fig. 1) to transmit a message to one or a plurality of other phones (see operation of 14-18, fig. 5);

Housing means (10) housing the telephone assembly, the housing means having theme identification means (see 14-18) for identifying a theme associated with the other phones.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3, 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bertolet in view of Hensley (US D318468).

Regarding claims 3, 11, 13-16, Bertolet shows the housing means (10).

Bertolet differs from the claimed invention in that it does not explicitly mention that the housing means can be in different shapes, such as a star or sexual shape, including their respective services, such as astrology or sexually related services.

However, phones in various shapes are commonly seen. This is also shown by Hensley, such as the phone designed in sexual shape (see fig. 1). Further, from the various shapes shown in the present application, it can also be seen that phones can be in various shape. Therefore, it would have been obvious for one skilled in the art to design Bertolet's phone in any shapes, including the star or sexual shape, with/without the teaching of Hensley, this simple can be considered as a variation of Bertolet, as long as the basic concept of programming the phone is substantially unchanged.

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Further, the basic concept of programming the phone is well taught by Bertolet, the type of pre-recorded messages is dictated by the intended use of the phone, in the Bertolet case, the phone is intended to use to call the police, therefore, the message is an emergency related service. Therefore, when the phone is intended to use with an astrology or sexually related service, it can certainly be programmed to have the message in such service, this simply is an intended use for the Bertolet device and would have been obvious for one skilled in the art without altering the basic concept of Bertolet.

Regarding claims 2, 5-10, 12, Bertolet shows:

The theme identification means (14-18, 10) is the shape or pattern of the housing means;

The theme identification means (see 14-18) for identifying a theme associated with the phone service;

The programming means (14-18, fig. 5) is a key pad having pre-programmed phone numbers;

Connection actuating means and disconnection means (23d); and


The phone assembly cannot receive incoming telephone calls (col. 2, lines 41-42).

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack Chiang whose telephone number is 703-305-4728.

The examiner can normally be reached on Mon.-Fri. from 8:00 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar, can be reached on 703-305-4731. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jack Chiang
Primary Examiner
Art Unit 2642